

24, 1959, to pay rent out of his own pocket either by himself or his so-called attorney — assuming the statement in Ex.P8 to be true — must be in pursuance of an active deception to which the appellant was a knowing party providing the rent moneys to Subramaniam. A final touch which showed that the appellant was not telling the truth is to be seen in his evidence as follows:

"I put up my signboard in 1955 as soon as D14 was signed. I took down the Khalsa Flour Mill sign as soon as I entered the premises and put up our signboard. After signing D14 our man paid the rent not Subramaniam."

Later in cross-examination he said:

As soon as I signed D14 I put up my signboard and took down Khalsa Flour Mill's signboard and this is correct. I did inform my solicitors about this. Letter from Defendant's solicitor to Plaintiff's solicitor produced and marked (P16), this letter saying that we took down the board in 1959 is incorrect. We never tendered rent by letter but by a messenger. When Plaintiff refused to accept rent I sent the rent by money order accompanied by a letter and signed as T.A. Packeer Mohamed & A. Majeed. I have never signed as Khalsa Flour Mills. Six letters written to Plaintiff enclosing money order for rent produced, identified and marked (P17). I don't recognise the signature probably they were signed by the then managers."

Even until October 9, 1961, the appellant still persisted in trying to pull the wool over the landlord's eyes by using the round seal of Khalsa Flour Mills.

For the reasons set out above, and after carefully considering the evidence of the plaintiff's attorney, I am more than satisfied that he was telling the truth, the whole truth and nothing but the truth. I am satisfied that at all times since the date of the notice (Ex.P2) the plaintiff's attorney was diligent and careful to see that he should not by any oversight permit any third party to take over Subramaniam's place in the premises. His concern on this point negatives any intention of giving Subramaniam a contractual tenancy; moreover the notice Ex.P3 was never revoked. Finally, the notice of increase of rent dated December 1, 1960 (Ex.P13) was sent, and increases accepted, while the landlord's attorney in good faith believed in the truth of the active misrepresentations of the appellant that Subramaniam, and no one else but Subramaniam, was the party with whom the landlord was contracting for a fresh tenancy at the increased rent. Consequently there never was any contract between the appellant and the landlord resulting from the tender and acceptance of rent until such time as the landlord's agent became aware of the deception. The appellant was thus a trespasser, and a calendar month's notice is not required by law. As to the submission that a second notice invalidated the first, the law is clearly laid down in *Loewenthal v. Vanhoute & anor.*⁽¹⁾ where Denning J. (as he

A then was) said:

"When a valid notice has been given, a new tenancy can be created only by an express or implied agreement. A subsequent notice to quit is of no effect unless other circumstances form the basis for inferring a new tenancy having been created after the expiry of the first notice The mere fact that a solicitor, in order to get possession, gave another notice to quit, is not, in my judgment, any reason for inferring any agreement for a new tenancy."

I express no regrets in coming to the conclusion I do, and in dismissing this appeal because this is one instance of many where the landlord has been the subject of heartless victimisation by persons practising fraud and deception under the protective umbrella of the law of rent control. The appellant fully deserves to be penalised in costs of this appeal because of his dishonest conduct. He will pay such costs as taxed.

Appeal dismissed.

Solicitors:—*Lovelace & Hastings; Chung & Huang.*

AU AH LIN v. PUBLIC PROSECUTOR

[F.C. (Thomson, Lord President, Wee Chong Jin C.J. (Singapore), & Wylie C.J. (Borneo) October 1, 1963]
[K.L. — Federal Court Criminal Reference No. 1 of 1963]

Evidence—Credibility—Questions of —No justification for interference—Evidence Ordinance, 1950, s.24.

Excise—Samples of seized goods—Excise Act, 1961, ss.17(1), 61 & 75(1)(a).

The appellant was charged under sections 17(1) and 75(1)(a) of the Excise Act. The evidence for the prosecution depended largely on statements made by the appellant to a Revenue Officer. It also included findings by an analyst as to the nature of the contents of a number of receptacles found on the premises. That evidence made out that the contents were excisable liquor. There were two grounds of appeal: (1) the evidence of the Revenue Officer as to the statements made by the appellant was wrongly admitted contrary to section 24, Evidence Ordinance, (2) there was no compliance with the provision of section 61 of the Excise Act.

Held: (1) the admissibility of the evidence was a question of fact which rested on questions of credibility. In this case the questions of credibility were decided against the appellant by the learned Magistrate and there is no authority to justify the appellate court in interfering;

(2) section 61 of the Excise Act does not require that samples be taken of the contents of every package or container which is in question. The samples should be 10% of the packages or containers and when that is done the presumption mentioned in the section as to the contents of all the packages arises. The section does not require the taking of any particular quantity. The words "ten per centum" refer to the packages, not to the contents of each package.

Case referred to:—

(1) *Chye Ah San v. Regina* [1954] M.L.J. 217, 219.

FEDERAL COURT.

Chew Kok Chooi for the appellant.

Harun bin Hashim (Deputy Public Prosecutor) for the respondent.

Thomson, Lord President (delivering oral judgment): This appeal comes before this Court for rehearing by reason of the provisions of section 34 of the Courts Ordinance. Like other references to Court under that unfortunate section I am afraid it is not going to prove productive of very much light.

The appellant was convicted for possession of a still and of samsu in contravention of sections 17(1) and 73(1)(a) of the Excise Act, 1961. There were two charges on both of which she was convicted. On the second charge the sentence imposed was less than the minimum sentence prescribed by law.

The evidence for the prosecution does not call for recapitulation here. Suffice it to say that it depended largely on statements made by the appellant to a Revenue Officer. It also included findings by an analyst as to the nature of the contents of a number of receptacles found on the premises. That evidence made out that the contents were excisable liquor.

The appellant appealed against her convictions and the Public Prosecutor cross-appealed against her sentence in respect of the second charge.

On the hearing of the appeals Mr. Justice Syed Sheh Barakbah dismissed the appeal against conviction but allowed the appeal against sentence. He then gave his certificate for the matter to be re-argued before this Court.

In our view, the appellant's appeal is without substance.

There are two grounds of appeal.

The first ground of appeal is that the evidence of the Revenue Officer as to the statements made by the appellant was wrongly admitted. It was said to be inadmissible and wrongly admitted by reason of the provision of section 24 of the Evidence Ordinance, as discussed in this context by Spencer-Wilkinson J. in the case of *Chye Ah San v. Regina*,⁽¹⁾ on the ground that it was obtained by threats. In our view that was a question of fact which rested on questions of credibility. The questions of credibility were decided against the appellant by the learned Magistrate who tried the case at first instance and we know of no authority which would justify this Court in interfering.

The second ground of appeal is that there

A was non-compliance with the provision of section 61 of the Excise Act 1961, which reads as follows:

"When any goods suspected of being dutiable or otherwise liable to seizure have been seized, it shall be sufficient to open, examine, and if necessary to test the contents of ten per centum only of each description of package or receptacle in which such goods are contained, and the Court shall presume that the goods contained, in the unopened packages or receptacles are of the same nature, quantity and quality as those found in the similar packages or receptacles which have been opened."

In our view, that ground of appeal is based on a misapprehension. It is quite clear that the Revenue Officers took possession of either all or part of the contents of every container alleged to contain excisable liquor. The amount of the sample is not in evidence in every instance.

In our view section 61 does not require that samples be taken of the contents of every package or container which is in question. The samples shall be 10% of the packages or containers and when that is done the presumption mentioned in the section as to the contents of all the packages arises. In our view the section does not require the taking of any particular quantity. That is abundantly clear on the reading of the section itself. The words "ten per centum" refer to the packages, not to the contents of each package.

On these grounds we are of the same view as the Judge in the High Court and hold that the appeal against conviction should be dismissed.

As regards the question of sentence, the fine imposed by the Judge was the minimum fine allowed by law. Of that, we fear, the appellant cannot complain. As regards the alternative sentence of imprisonment imposed in default of payment, that was a matter within the discretion of the Judge who varied the original fine and it would be wrong for us to interfere.

Appeal dismissed.

Solicitor:—*Kam Woon Wah & Co.*

NG WAN BEE v. F. KEITH SELLAR

[O.C.J. (Ong J.) October 10, 1963]

[K.L.—Civil Suit No. 106 of 1962]

Solicitor and client—Allegation of professional negligence—F frivolous and vexatious—Allegation of duress—Whether duress synonymous with negligence.

The plaintiff claimed against the defendant the sum of \$29,924 being damages by reason of the defendant's negligence and improper conduct in respect of an arbitration and an action which the defendant undertook to perform for the plaintiff as the plaintiff's advocate and solicitor. With respect to the arbitration the plaintiff alleged that (i) the defendant negligently and unreasonably advised and induced the plaintiff against his